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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Policies and Rules)	
Concerning Rates)	
for Dominant Carriers)	CC Docket No. 87-313
)	
Revisions to Price Cap)	
Rules for AT&T)	CC Docket No. <u>93-197</u>

REPLY COMMENTS OF
SOUTHWESTERN BELL TELEPHONE COMPANY

Southwestern Bell Telephone Company (SWBT), pursuant to the Further Notice of Proposed Rulemaking issued by the Federal Communications Commission (Commission) on May 18, 1995,¹ hereby files its Reply Comments in the above-styled matter. SWBT's Comments address SWBT's positions on the Commission's tentative conclusions. These Reply Comments specifically address the general position taken by AT&T in the Comment round of this proceeding.

AT&T generally objects to the proposals of the Commission in the Further Notice.² Instead, AT&T basically argues that basket 1 services should be immediately removed from price cap regulation.³

AT&T's attempt to achieve here what it has been unable to gain from its attempt to be reclassified as a nondominant carrier should not be countenanced. To the extent that AT&T's Comments

¹ Policy and Rules Concerning Rates for Dominant Carriers Revisions to Price Cap Rules for AT&T, CC Docket No. 87-313, CC Docket No. 93-197, Further Notice of Proposed Rulemaking (FCC 95-198) (released May 18, 1995) (Further Notice).

² AT&T at pp. 4 and 40.

³ AT&T at p. i.

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wish to transform this proceeding into a parallel forum for its desire to be relieved of dominant carrier regulation, they should be rejected. The Commission is legally unable in this proceeding to grant AT&T the relief it suggests.

In a recent decision of the U S Court of Appeals for the D.C. Circuit, the Court has held that

The APA requires the Commission to provide notice of a proposed rulemaking 'adequate to afford interested parties a reasonable opportunity to participate in the rulemaking process.'

In the MCI decision, the Court effectively held that the Commission's actions in a notice of proposed rulemaking proceeding are limited to the scope of what the Commission covers in the notice document.

In the Further Notice, the Commission has specifically deferred consideration of whether "all of the services that currently are included in Basket 1 should be removed from price cap regulation and afforded streamlined regulatory treatment."⁵ The Commission has thus placed "interested parties" on notice that removal of AT&T's Basket 1 services from price caps will not be considered here.

Given that the Commission has specifically excluded any question of whether AT&T's Basket 1 services should be removed from price cap regulation from the scope of its Further Notice, AT&T cannot expect to receive such a result from the Commission in this

⁴ MCI Telecommunications Corporation v. FCC, (Case No. 93-1464, slip op. decided June 27, 1995) at p. 9, quoting Florida Power and Light Company v. United States, 846 F 2d. 765, 771 (D.C. Cir. 1988).

⁵ Further Notice at para. 35.

stage of the proceedings. Nevertheless, throughout its Comments, AT&T asks for just that type of result. Instead, AT&T should have addressed its Comments to the "tentative conclusions" listed by the Commission and not to the Commission's conclusion which was not tentative (that Basket 1 services should not be removed from price cap regulation in this proceeding).

Under the MCI decision, if the Commission were to change course and to adopt any of the AT&T request for removal of services from price cap regulation, the Commission would be acting outside the scope of its notice. Interested parties would not have a reasonable opportunity to comment upon such an action, as it is not listed in the issues being considered (indeed, it has been specifically excluded). Thus, AT&T should have reserved its pleas for removal from price cap regulation to the proceeding reserved for that purpose (AT&T's motion to be reclassified as nondominant).

For the reasons stated above, and in SWBT's Comments,

SWBT respectfully requests that the Commission adopt the changes to the AT&T price cap plan recommended by SWBT in its Comments, and reject the attempt by AT&T to change the scope of this proceeding.

Respectfully submitted,

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July 24, 1995

CERTIFICATE OF SERVICE

I, Martha Marshalek, hereby certify that the foregoing Reply Comments of Southwestern Bell Telephone Company, Docket No. 87-313 and 93-197, have been served this 24th day of July, 1995 to the Parties of Record.



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